

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

UNITED STATES

VS.

CRIMINAL NO. 3:12-cr-88(DCB(FKB)
CIVIL ACTION NO. 5:15-cv-27(DCB)

BOOKER TARVIN

DEFENDANT

ORDER

This cause is before the Court on counsel for defendant's ore tenus motion to extend time to file notice of appeal. A response from the Government is not necessary. Having considered the motion, the Court finds that it should be granted.

Pursuant to Rule 4(b)(1) of the Federal Rules of Appellate Procedure, a criminal defendant has fourteen (14) days after the entry of judgment to file a notice of appeal. This was reflected in the Court's Memorandum Opinion and Order of September 25, 2015. Therefore, the final day for the defendant to file a timely notice of appeal was October 8, 2015. However, pursuant to Rule 4(b)(4) of the Federal Rules of Appellate Procedure, a district court may grant an additional thirty (30) days in which to file a notice of appeal upon a finding of excusable neglect or good cause. Since the defendant's counsel made her ore tenus motion within the additional thirty (30) day period, the Court must determine whether the untimely filing of the notice of appeal was due to excusable neglect or good cause. It appears to the Court that counsel for the defendant simply made a mistake with regard to computing the

time for filing a notice of appeal. In light of the fact that the notice of appeal would have been timely filed, the Court finds that it is unlikely the Government will suffer any prejudice, and that the defendant would be greatly prejudiced by the Court's disallowance of his appeal. Accordingly, any failure to file a timely notice of appeal was excusable under Fed.R.App. 4(b)(4). It is, therefore,

ORDERED that the defendant's motion to extend time to file notice of appeal is GRANTED;

FURTHER ORDERED that the defendant file his notice of appeal on or before November 6, 2015.

SO ORDERED, this the 14th day of October, 2015.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE